

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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|--------------------------------|---|-----------------------|
| TOLL BROTHERS, INC., |) | Case No. 08-987 SC |
| |) | |
| Plaintiff, |) | ORDER DENYING |
| |) | PLAINTIFF'S MOTION TO |
| v. |) | AMEND FINDINGS OF |
| |) | FACT AND CONCLUSIONS |
| CHANG SU-O LIN; HONG LIEN LIN; |) | OF LAW AND ALTER |
| HONG YAO LIN, |) | <u>JUDGMENT</u> |
| |) | |
| Defendants. |) | |
| |) | |
| _____ |) | |
| AND RELATED COUNTER-CLAIMS. |) | |
| _____ |) | |

On July 6, 2009, Plaintiff Toll Brothers, Inc. ("Plaintiff" or "Toll") filed a Motion to Amend Findings of Fact and Conclusions of Law and Alter Judgment. Docket No. 227 ("Motion"). Defendants Chang Su-O Lin, Hong Lien Lin, and Hong Yao Lin (the "Lins") filed an Opposition and Plaintiff submitted a Reply. Docket Nos. 229, 230.

Having considered the parties' submissions, the Court finds no error in its conclusion that the Lins did not breach the Purchase and Sale Agreement ("PSA") by granting a temporary easement to PG&E. Having considered all the evidence and arguments presented at trial, the Court concluded that the Lins' grant of a temporary easement to PG&E was too minor an issue to justify Toll's termination of a contract of this size and scope. As occurred on prior occasions, this minor issue could easily have

1 been resolved if Toll had lived up to its contractual obligation
2 to cooperate with the Lins, especially since Toll had stopped
3 planning the development of Sub-Area 3 in late 2006. Also, since
4 the Lins had the right to extend the close of escrow beyond June
5 30, 2007, the Lins did not breach the PSA by granting PG&E a
6 temporary easement that had not been extinguished by that date.

7 The purpose of Rule 52(b) is to allow a court to correct
8 manifest errors of law or fact, or in limited circumstances, to
9 present newly discovered evidence, but not to relitigate old
10 issues, to advance new theories, or to secure a rehearing on the
11 merits. Gutierrez v. Ashcroft, 289 F. Supp. 2d 555, 561 (D.N.J.
12 2003). The arguments raised in Toll's Motion seek to either
13 relitigate old issues, advance new theories, or secure a rehearing
14 on the merits. The Court DENIES Toll's Motion.

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16 IT IS SO ORDERED.

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18 Dated: August 20, 2009

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20 UNITED STATES DISTRICT JUDGE
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